

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 642 of 1991****For Approval and Signature:****HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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STATE OF GUJARAT - Appellant
Versus
BARKATALI ABDULLA BAYANI - Respondent

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Appearance :

MR MA PATEL ADDL PUBLIC PROSECUTOR for Appellant : 1,
MR AD SHAH for Respondent : 1,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**Date : 02/12/2006****ORAL JUDGMENT**

1. Heard Shri Patel, learned Addl.P.P. for the
appellant - State of Gujarat and Shri A.D. Shah,
learned counsel for the respondent - original

accused.

2. The appellant - State of Gujarat has preferred this Appeal under Section 378 of the Code of Criminal Procedure (herein after referred to as 'the Code' for short) challenging the judgment and order of acquittal dated 3.6.1991 passed by the learned Special Sessions Judge, Amreli in Essential Commodity Case No. 35 of 1984 acquitting the present respondent original accused of the charges of committing offences under Section 3 and 7 of the Essential Commodities Act (herein after referred to as 'the Act' for short).
3. This Court (Coram: K.J. Vaidya, J.) vide order dated 2.4.1992 granted leave and admitted the appeal.
4. The facts leading to file this appeal deserves to be set out as under.
5. The officers of the Civil Supplies department received information that accused was storing and keeping stock of Essential Commodities like 'wheat, sugar' and other oil seeds in excess of the permissible quantity under the Act and under the Essential Article Control Order, 81 (herein after referred to as 'the Order'). The raid was carried out in presence of the panchas. The panchnama was drawn and report to this effect was made to the concerned Collector. The seizure order was passed. Receipt of keeping the seized goods with the accused was obtained. The complaint was filed for violating of the Order

81 as the said goods were found in custody of the accused without any proper licence and permission thereof. The trial Court has after recording the evidences and appreciating the same, came to the conclusion that the prosecution has failed in establishing the case beyond reasonable doubt and therefore, the accused was acquitted for the offence punishable under Sections 3 and 7 of the Act vide its judgment and order dated 3.6.1991, which is impugned in the present appeal.

6. Learned Addl.P.P. Shri Patel has vehemently urged that as the order of acquittal is contrary to the evidence and material on record, the same deserves to be quashed and set aside. Shri Patel has also submitted that minor contradictions appearing in the testimony of prosecution witnesses, cannot be attached weightage so as to ignore and discard the evidence coming on record in form of documents. Shri Patel has further submitted that the fact has remained to be noticed that sizable quantity of essential commodities in excess of the permitted quota was found and therefore, as the accused has committed an offence punishable under Sections 3 and 7 of the Act, the acquittal deserves to be set aside and accused deserves to be convicted and inflicted with appropriate punishment. Shri Patel has further submitted that the statement of the accused came to be recorded by the raiding party which is produced at Ex.18,

wherein, it is clearly admitted by the accused that the stock and quantity of the essential goods was in fact in excess of the permissible limit prescribed under Order of 1981, the same ought to have been viewed appropriately by the trial Court. The ownership of the property, wherefrom, the goods were found to be in excess of the permitted limit, was established by the prosecution and therefore, in view of this, the order of acquittal appears to be unjust and therefore, the same deserves to be quashed and set aside.

7. Shri Shah, learned counsel appearing for the respondent - original accused has submitted that this being an acquittal appeal, unless and until the appellant established before this Court that the reasoning and findings of the trial Court are so perverse as to result into miscarriage of justice, the order of acquittal impugned in this appeal may not be interfered with. Shri Shah has submitted that looking to the judgment and order of acquittal, it can be said that the same is absolutely just and proper and therefore, the same deserves to be sustained. Shri Shah has taken this Court through the record and proceedings, especially the testimony of Prosecution Witness No. 1, PW-2, PW-3, PW-4 and PW-5 and also of defence witness No. 1. Shri Shah has pointed out that the contradictions appearing in the version of the prosecution witnesses have rightly been appreciated by the

trial Court and those contradictions have dealt serious blow to the entire case of the prosecution. The contradictions are certainly not minor and therefore, they have rightly been appreciated by the trial Court. Shri Shah has pointed out that PW-1 has stated in respect of the timing of the raid, information and place of raid, which is not finding absolute support from the version of PW-2. That the interpolation admitted by PW-2 in document at Ex. 18 and Ex. 19 would go to show that these interpolations are very material and sufficient to knock out the case of the prosecution. Shri Shah has further submitted that the witness is an employee of Government, working in the Civil Supply Department since long and when an experienced Government officer if intends to interpolate something in a document then he would ensure that the same would be counter signed by the author. The interpolation pointed out by Shri Shah do not have any counter signature by the author. Shri Shah has further submitted that in an acquittal appeal under Section 378 of the Code, even if there is another view possible, the same cannot be made basis for interfering or reversing the findings and decision of order of acquittal by the trial Court.

8. This Court has perused the records and heard the learned counsel for the parties. From the perusal of the record and submission of the

counsel, the following emerge :

(a) PW-1 has admitted that he knew the accused since long. He has further admitted that no licence is required for keeping and storing the agricultural produce produced by the agriculturist himself. He also admits that they reached at around 8-00 AM at the place of accused and after making inquiries, search had started at around 11-00 O'clock and it lasted upto 2-00 PM. He also admits that when the stock was searched, the panch witnesses were not there. He has also admitted that ownership of the place of stock was not ascertained. He also admits that he has not been aware even afterwards wherefrom, the excess stock was noticed. He also admits that stock found in excess, except Sugar, was that of agricultural produce only. He also admits that except the accused, no one else's statement from the village had been recorded. He also admits that various statements of the accused were recorded till the report was made to the Collector in respect of the seizure. He admits that the goods were found to be in excess on counting the Gunny bags, wherein the goods were stored.

(b) This prosecution witness has admitted in his cross-examination that the document Ex. 22 is shown to him and the interpolation made appears to be distinctly different then the regular writing in Ex. 22. He admits that he was not aware as to the copy of panchnama be ever given

to the accused. He states that if it was given, it would have been counter signed by the accused.

(c.) He admits that different commodities were noticed in excess from different premises.

(d) PW-2 has admitted that the statement of the accused at Ex.18 was taken down by him in his own hand writing. The seizure order and report were also made in his own hand writing. The seizure order was at Ex. 23 and receipt issued by the accused was at Ex. 24. This witness PW-2 has stated in his testimony that they had reached the place of accused at about 12-00 hrs and straightway, they had gone to the place of accused and they started searching of the godown at about 2-00 PM. This witness has stated that he is not aware as to wherefrom they got keys for opening godown. He stated that there is no mention in panchnama in respect of keys. He admits that in Ex. 22 panchnama, the statement "this trader informs that this stock is not of his own agricultural produce" was added by him subsequently.

(e) This PW-2 has also admitted that Ex. 18 document was written in his own hand writing. In the document Ex. 18, the following was interpolated later on " I have sold out my agricultural produces - ground nut, tile, wheat, mullet, pulses and cereals and this stock is not

out of his agricultural produce."

(f) This witness has admitted that he is aware that the accused owned agricultural land and accused's mother and brother also owned agricultural lands. He has denied that the accused had informed that the sugar had belonged to 8 different persons.

(g) The PW-3 is the owner of the premises, wherein, the accused's shop was situated. He has admitted at many places that the accused had agricultural land. The accused's land is quite fertile. The accused had grown agricultural produce in agricultural land and water was extracted with the help of electric motor. He has also admitted that the accused use to store his agricultural produce in the godown. He also admitted that Trust's shop, which was rented by the accused, was used for storing his agricultural produces. He also admitted that 75 bags of sugar were purchased by 8 persons along with him two to three days ago and they were kept in these place of search. Keys of door of godown was given by him for opening the door during raid. He also admits that he has informed the raiding party that sugar belonged to 9 persons.

(h) The document in the form of village extract of Form No. 7X12 also show that the accused owned agricultural land and he was producing oil seeds, millets, Chana etc, during that relevant years.

(i) The testimony of the defence witness also raises serious doubt about the version of the prosecution.

9. Against the aforesaid backdrop, the order of acquittal impugned in the present appeal deserves to be examined.

10. The contradictions which have been noted hereinabove, cannot be brushed aside as they appearing to be very material and vital. These contradictions can well be said to have dealt serious blow to the case of the prosecution. The admission of interpolation came to be recorded on the part of PW-2 in the vital document at Exs. 18 and 22, also deserve to be considered in its proper perspective. The Civil Supply Officer carrying out raid were expected not to make any interpolation without obtaining the counter signature of the author of the statement. The document Ex. 22 being a panchnama, that was at least be signed by the author, if there is an interpolation. But the interpolation had not remained an interpolation made during writing but those interpolations are made afterwards and that fact has come out from the testimony of the panch witness No. 2. These facts coupled with the fact that accused, his mother and his brother owned agricultural land and testimony of the panch witnesses No. 3 - owner of the premises, would all go to show that the

prosecution has not established its case beyond reasonable doubt so as to fastion the accused with criminal liability for offence punishable under Sections 3 and 7 of the Act. The judgment and order of acquittal appears to be just and proper and therefore, does not required to be interfered in this acquittal appeal preferred by the State under Section 378 of the Code.

11.In the result, this Court is of the considered view that the order of acquittal dated 3.6.1991 passed by the learned Special Sessions Judge, Amreli in Essential Commodity Case No. 35 of 1984 being just and proper, does not call for any interference. In the result, Appeal fails and it deserves to be dismissed and accordingly it is dismissed.

(S.R.BRAHMBHATT, J.)

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